Remarks to House Committee on Families and Children's Services

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MADAM CHAIR VALENTINE, MR. VICE CHAIR KURTZ, REPRESENTATIVE LISS, MEMBERS OF THE COMMITTEE, DISTINGUISHED GUESTS, AND LADIES AND GENTLEMEN: Thank you for the opportunity to provide remarks in support of HBs 4006 and 4015.

I was adopted as a 6-week-old baby in November 1969, and I am now the father of 5 children of my own.

I am a practicing attorney here in Lansing. While my professional legal expertise is in other areas, I am intimately familiar with the state and national legal issues associated with contact between birth parents and adoptees and sealed adoption and birth records.

I have personal experience with the legal proceedings to search for a birth parent using Michigan's confidential intermediary process—through that process I searched for and found my birth mother in 1998 in Phoenix, Arizona. We met in 1999 and were in frequent contact for nearly 5 years. From my birth mother, I

learned the identity of my birth father, and I made contact with him in 2003. Through his family, I have a half-brother and half-sister. We all remain in contact to this day. Just two months ago, I spent a deeply satisfying weekend on Cape Cod with my 88-year-old grandfather, my birth father's father, who wishes only that he had known me sooner and that I could have met my grandmother, who passed away before we had the chance to meet. My half-sister, Jamie, who lives in Tennessee, will be spending her second weekend here in Michigan with me and my wife and children this coming Memorial Day. Jamie adores my children, and they love having another aunt.

I have personal experience with the legal process to obtain my original birth certificate as well. When I made my first request for my original birth certificate just this past December—after I had already established relationships with both my birth mother and birth father, after I knew their names, and after I knew that my birth mother gave me the name "Michael" on my original birth certificate—the law still stood in my way, barring me from receiving a copy of my own original birth certificate simply because there was no active consent from a birth parent on file with the Michigan Central Adoption Registry. I had to obtain a court order to have my birth certificate released to me—and the court found "good cause" to do so since I already knew my birth parents' identities.

You should know that I was raised in a loving and supportive adoptive home right here in mid-Michigan. I have an older brother who was adopted too. My parents—my adoptive parents—have trusted and understood that, in my adult life, it is important to me and my identity to know and connect with my biological roots as well. Indeed, one of the most satisfying experiences of my life, second only, perhaps, to the joy of becoming a father myself, was to spend an evening last fall having dinner together with my parents and my half-sister.

Let me be very clear: I generally support these bills, but I think they need to go farther. While I laud the idea in this legislation of having a contact preference form for birth parents to complete, an adult adoptee's right to obtain his original birth certificate must not be contingent on any preference stated on that form. New Hampshire's law should be the model for Michigan—there, birth parents may fill out a contact preference form, stating their desire to not be contacted (or to be contacted), but adult adoptees are given access to the original birth certificates upon reaching the age of majority regardless of what the contact preference form says, and regardless of whether one has been filed. Quite simply, New Hampshire has it right. I find it personally repugnant and morally offensive that the state would deny an adult citizen the fundamental right to know the circumstances of his birth.

I think it's time for the law in Michigan to catch up with the evolving social understanding that an adult adoptee's need to know where he came from is not idle curiosity, but vitally important to his self-identity, and therefore worthy of state recognition and protection. I think it's time for the law in Michigan to reflect the fact that birth parents and adoptees are much more likely than not to want to make connections with each other at appropriate points in their lives—that it is healthy to do so, and that neither needs the law to shield one from the other.

I also think, finally, that it's time for the law in Michigan to stop doing a horrible disservice to birth mothers. I'd like to explain this point a bit more. I understand from my own legal research that one of the grounds for constructing the legal walls of secrecy that protect a birth mother's privacy and identity and seal off adoption records and birth certificates from the adoptee and adoptive family is the paternalistic view that the birth mother should have a chance to move on with her life unaffected by the "mistake" of her unintended pregnancy, and that she deserved to do so without any consequences in the future. As I said, I think the law does birth mothers a horrible disservice in this regard. I am an adoptee, of course, not a birth parent who has ever relinquished a child for adoption. But that doesn't mean I can't speak to this point, for I am a parent too,

who has participated in the creation of life, 5 times over, just as my birth mother did once. No personal or social upheaval, and certainly no state law, could ever erase that experience for me. Thus, the law does a horrible disservice to birth mothers by perpetuating a myth to them, at a vulnerable time in their lives, that a simple promise of life-long confidentiality can allow them to pretend that they never gave birth.

Now, let me be equally clear what this is NOT about.

I am not here to advocate for a wide-open process where adoptees have unfettered access to identifying information and birth parents even as minors. I firmly believe that both birth parents and adoptive parents each deserve the privacy and confidentiality afforded by the present statutory scheme, at least absent express understandings and agreements for an open adoption process. I think it is critically important for the adopted child's well-being and developing connection with his adopted family that confidentiality be kept during childhood.

But the law needs to recognize that there is no longer a need for confidentiality once the adoptee is an adult.

I think there is a reason why our TV networks are bringing us shows this season like NBC's "Who Do You Think You Are?" and ABC's "Find My Family." In each, families are connected with their past, with ABC's "Find My Family"—a six-

episode series that aired last fall—focused exclusively on connecting birth families and adult adoptees.

I think there is a reason why the front page story of the *Grand Rapids Press* from March 7, two Sundays ago, told the story of an adoptee—an adult woman who is herself an adoption advocate and employee of Bethany Christian Services for Ottawa County—who spent the better part of two decades searching for her biological family, discovering a mother and family and nine biological siblings.

I think there is a reason why the issue of giving adult adoptees the same access to their original birth certificates that every non-adopted person enjoys has been one of many top vote-getting ideas on the Change.org website in the last few months, as part of the site's effort to identify important national public policy initiatives that merit grassroots support and political and legislative attention.

And I think there is a reason why several states have amended their laws in recent years to open birth and adoption records to adult adoptees, among them, for example, Maine (January 1, 2009), New Hampshire (January 1, 2006), Alabama (in 2000), Oregon (in 1998) and Tennessee (in 1995).

Sadly, ballot initiatives and legislative efforts for more openness in adoption records in other states have failed. Usually, conservative groups or bar

associations, and sometimes both, have successfully argued that it is necessary to give birth mothers life-long privacy and the right to be left alone, always at the expense of the adoptee's right to know information about himself. They claim that birth mothers will choose abortion over adoption if they are not assured confidentiality. They claim that adoptive families will no longer adopt if relinquishing birth parents might find their children some day.

While these claims have raw emotive power, they are also fallacy. This committee, and the legislature as a whole, should be making policy choices based on fact. And the facts just don't bear these claims out.

I suspect others who address this committee may present similar facts, but if so, the repetition of my highlighting them too will serve to underscore their importance.

The abortion rates for Alaska and Kansas, two states that have long granted adult adoptees unconditional access to their original birth certificates, were both lower in 1996 (the last time such statistics were analyzed) than the rate than for the United States as a whole. Specifically, while the national abortion rate then was nearly 23 for every 1,000 women between the ages of 15-44, the rates in Alaska and Kansas were lower, and lower by a significant amount—36% in Alaska and more than 17% in Kansas. Alabama, which opened birth and adoption

records to adult adoptees in 2000, saw its abortion rate decline by 1.3 percent in the first year after such records were made available. It was the largest single-year decline in the abortion rate there in a decade.

Looking at adoption rates, the National Center for Court Statistics reported in 1992 that the rate of adoptions per 1,000 live births was 31.2 nationally, but 71 percent higher in Alaska and 55 percent higher in Kansas, two open records states, but lower in surrounding states with sealed adoption records laws.

I challenge the detractors of this legislation to rebut these facts.

I was asked to specifically address confidentiality issues with my remarks. Since it would be the rare exception for an adult adoptee to demand confidentiality regarding his adoption records and the identities of his birth parents, I can only assume the real concerns associated with confidentiality relate to the birth mother.

First, let me address another fallacy. Generally speaking, it was *not* birth mothers who demanded confidentiality in the adoption process. Quite to the contrary, extensive anecdotal evidence, collected in Judith Gediman and Linda Brown's 1986 book, *Birthbond: Reunions Between Birthparents and Adoptees*, proves that the vast majority of birth mothers never asked for life-long protection and confidentiality from their relinquished children. Rather, they were simply

told it was a condition of the adoption process through an agency—whether they wanted it or not.

Second, let me make a legal point addressed in some of the court challenges to recently enacted open records laws. Even the promise of confidentiality made to birth mothers in the law is illusory at best. In Michigan, from 1945 on, the seal on adoption records and identifying information has always been subject to a "good cause" exception—in other words, a court may order that a birth parent's identity be disclosed if "good cause" is established for doing so. And you should know that the Michigan Attorney General ruled in 1954 that an adult adoptee's request for his own birth and adoption records would constitute "good cause" to release records to the adult adoptee himself. The Attorney General's Ruling is particularly noteworthy because it was rendered close enough in time to the 1945 enactment of the seal on adoption records that we should presume the Attorney General was in the best position to understand the intent of the 1945 legislature—and he ruled that the intent of the statutory seal was NOT to bar an adult adoptee from having access to his own records.

More importantly, no adoption agency worker and no lawyer could ever guarantee a birth mother considering relinquishment that a future Michigan Legislature wouldn't change the law regarding confidentiality and contact. In

1995, for example, P.A. 202 of 1994 went into effect, allowing confidential intermediaries to contact birth parents to facilitate reunions with adoptees. If the confidentiality "promise" were absolute, such contact could never take place, even through a third party. And even the law requiring confidentiality is far from absolute—it can never guarantee total confidentiality. It can only guarantee that the state is barred from disclosing identifying information about one to the other even if he or she requests it. The law cannot and does not protect either birth mothers or adoptees from the power of Internet searches and the very human and primal need for each to connect with the other, and often times they finds ways to do so privately—not served by the law, but impeded by it.

I believe that at some future time, when the history of our present day can be written with the objectivity that comes only with the passage of time, that history will record that the last decade of the 20th Century and the first decade of the 21st Century were the key turning points in the public debate on the need for more openness in the adoption process—certainly at least for adult adoptees and birth parents who relinquished children decades earlier. Our history in Michigan will then note that our law and public policy finally and rightly caught up with the evolving social standards that an adoption should be not shrouded in state-sanctioned life-long secrecy, even from the parties themselves; that an adult

adoptee's need and drive to find out where he came from is no different than the science community's need and drive to map the human genome. Each is an important quest to know where we came from, because, as the narrator's words in the opening segments of NBC's "Who Do You Think You Are" TV show tell us, *"You can't know who you are unless you know where you came from."*

Then, and only then, will Michigan finally breathe life into the words of the ancient Roman philosopher Cicero: *"Not to know what happened before we were born is to remain perpetually a child—for what is the worth of a human life unless it is woven into the lives of our ancestors in the record of history?"*

So in closing, while I urge this committee's passage of the bills, I must also call on the Legislature to add provisions giving adult adoptees the right to obtain their original birth certificates regardless of what a contact preference form provides.

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APPENDIX
New Hampshire's Adoption Records Law (N.H. Rev. Stat. §5-C:9)

5-C:9 Disclosure of Information From Vital Records. – In order to protect the integrity of vital records, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics, the registrar or the custodian of permanent local records shall not permit inspection of, or disclose information contained in vital statistics records, or copy or issue a copy of all or part of any such record unless he or she is satisfied that the applicant has a direct and tangible interest in such record.

I. Upon written application by an adult adoptee, who was born in this state and who has had an original birth certificate removed from vital statistics records due to an adoption, the registrar shall issue to such applicant a non-certified copy of the unaltered, original certificate of birth of the adoptee, with procedures, filing fees and waiting periods identical to those imposed upon non-adopted citizens of the state.

I-a. The registrar shall prescribe and, upon request, shall make available to each birth parent named on the original birth certificate, a contact preference form on which the birth parent may state a preference regarding contact by an adoptee who is the birth child of the birth parent. Upon such a request, the registrar shall also provide the birth parent with an updated medical history form, which shall be completed and returned, together with the completed contact preference form, by the birth parent to the registrar.

I-b. The contact preference form shall provide the birth parent with the following options from which the birth parent shall select one:

(a) I would like to be contacted. I have completed a contact preference form and an updated medical history form and am filing them with the registrar as set forth in this form.

(b) I would prefer to be contacted only through an intermediary. I have completed a contact preference form and an updated medical history form and am filing them with the registrar as set forth in this form.

(c) I would prefer not to be contacted at this time. I have completed a contact preference form and an updated medical history form and am filing them with the registrar as set forth in this form.

I-c. When the registrar receives a complete contact preference form and a completed medical history form from a birth parent, the registrar shall match the contact preference form and the updated medical history form with the adoptee's sealed birth certificate. The contact preference form and the updated medical history form shall then be attached to the adoptee's sealed certificate.

I-d. Only a person authorized by the registrar to process an application made under paragraph I may process a contact preference form and an updated medical history form.

I-e. The applicant, a member of his or her immediate family, his or her guardian, or respective legal representatives shall be considered to have a direct and tangible interest for purposes of this

section. Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right.

II. The term ""legal representative" shall include an attorney, physician, funeral director, or other authorized agent acting in behalf of the applicant or his or her family.

III. Commercial firms or agencies requesting a listing of names and addresses shall not be considered to have a direct and tangible interest.

IV. Properly qualified members of the press, radio, television, and other news media shall be considered to have a direct and tangible interest in vital statistic records when the information requested by such media sources is of a public nature.

V. Disclosure of certain information and statistical data to federal, state, or local agencies and research for legitimate purposes other than requests for vital records information for the purposes of health-related research under RSA 126:24-c may be authorized by the registrar under RSA 5-C:102-111.

VI. The department of health and human services shall have a direct and tangible interest in vital records information in accordance with the provisions of RSA 126:24-c.

VII. Disclosure of voluntary acknowledgments and adjudication of paternity by judicial or administrative processes shall be released for the purposes of the state case registry pursuant to RSA 161-B:7.

Source. 2005, 268:1, eff. Jan. 1, 2006 (http://www.gencourt.state.nh.us/rsa/html/I/5-C/5-C-9.htm)